

**IN THE UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF VIRGINIA  
*Lynchburg Division***

IN RE: CHARLES PATRICK GARNER  DEBTOR.	CHAPTER 13  CASE NO. 22-61065  JUDGE: REBECCA B. CONNELLY
U.S. BANK TRUST NATIONAL ASSOCIATION, AS TRUSTEE OF LB-TIKI SERIES IV TRUST  MOVANT,  V. CHARLES PATRICK GARNER 371 PIEDMONT STREET ORANGE, VA 22960  DEBTOR,  HERBERT L. BESKIN 123 EAST MAIN ST., STE. 310 CHARLOTTESVILLE, VA 22902  TRUSTEE,  RESPONDENTS.	

**MOTION FOR RELIEF FROM AUTOMATIC STAY PURSUANT TO 11 U.S.C § 362(a)**

**COMES NOW** U.S. BANK TRUST NATIONAL ASSOCIATION, AS TRUSTEE OF LB-TIKI SERIES IV TRUST ("Movant"), a secured creditor in the above-captioned case and, by and through counsel, and moves this Court to terminate the Automatic Stay as to the real property located at 371 Piedmont St., Orange, VA 22960 ("Property"), and, as grounds therefore, states as follows:

1. This proceeding seeking relief under 11 U.S.C. § 362 and 11 U.S.C. § 1301 is a contested matter within the meaning of Fed. R. Bankr. P. 4001 and 9014, and this court has jurisdiction over this matter pursuant to 28 U.S.C. § 157. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G) and (b)(2)(O). Venue is proper pursuant to 28 U.S.C. § 1409(a).

2. On October 14, 2022, Debtor filed a petition with the Bankruptcy Court for the Western District of Virginia under Chapter 13 of Title 11 of the United States Bankruptcy Code.

**COUNT 1  
RELIEF FROM AUTOMATIC STAY**

3. On or about May 3, 2019, Debtor, Charles Patrick Garner, executed and delivered to LoanDepot.com, LLC (Lender), a Note in the amount of Two Hundred Twenty Thousand Nine Hundred Twenty-Four Dollars (\$220,924.00), plus interest at the rate of 5.500% per annum to be paid over thirty (30) years. A copy of the Note dated May 3, 2019, is attached as **Exhibit A** and incorporated herein.

4. To secure the repayment of the sums due under the Note, Debtor, Charles Patrick Garner executed and delivered to LoanDepot.com, LLC, a Deed of Trust dated May 3, 2019, encumbering the Property, more fully described as:

#### **LEGAL DESCRIPTION**

ALL THAT CERTAIN lot or parcel of land located in the Town of Orange, Orange County, Virginia, fronting 90 feet on Piedmont Street, more particular described as Lot No. 19 on a plat of the property formerly belonging to Otis B. Jones, made by Keesee Brooking, Surveyor, in April 1949, which said plat is recorded in the Clerk's Office of the Circuit Court of Orange County, Virginia, in Deed Book 144, page 380 and in a plat of survey entitled: Physical Survey Melvin A. Holley et ux Property Town of Orange Orange County, Virginia..”prepared by Herndon and Grymes, Land Surveyors, dated May 5, 1987, recorded in the aforesaid Clerk's Office in Deed Book 395, page 681. Reference is hereby made to the said plats for a mor particular description as contained in said plats; and further, the metes and bounds description contained therein is incorporated herein by reference as if the same were textually contained herein.

A copy of the Deed of Trust is attached as **Exhibit B** and incorporated herein.

5. The Note and Deed of Trust were later transferred to Movant and Movant is the current holder of the Note and Deed of Trust.

6. Upon information and belief, the approximate payoff, exclusive of legal fees and expenses incurred in the connection with the instant motion, due and owing to the Movant good through February 8, 2023, is \$277,538.02, with interest accruing at the daily rate of \$33.07.

7. The value of the Property is approximately \$350,000.00 pursuant to Debtor's Schedule A/B.

8. The Debtor's Plan, as initially proposed on October 21, 2022 and amended from time to time, provided that the Debtor make ongoing monthly mortgage payments to Movant. Debtor's failure to abide by the terms of the proposed Plan is cause to lift the stay pursuant to 11 U.S.C. § 362(d)(1).

9. Debtor is in breach of the terms of the Note and Deed of Trust by failing to make the regular contact payments to Movant as and when they come due, from November 1, 2022, to January 1, 2023. Debtor is due for three (3) payments of \$1,677.36 per month. Debtor is in post-petition default

as of November 1, 2022, for a total amount due of \$5,032.08.

10. The Debtor has not and cannot offer Movant adequate protection of its interest in the Property, and Movant avers it is not adequately protected.

11. Debtor's failure to pay Movant's obligation as and when due violates the terms of, and is a default under, the Note and Deed of Trust.

12. Debtor's account delinquency as well as Debtor's failure to maintain regular contract payments to Movant as required by the proposed Plan, constitute cause for relief from the automatic stay.

13. Movant has incurred reasonable attorney's fees and costs in connection with prosecution of this motion.

**WHEREFORE** U.S. BANK TRUST NATIONAL ASSOCIATION, AS TRUSTEE OF LB-TIKI SERIES IV TRUST prays that this Court issue an order terminating or modifying the Automatic Stay under 11 U.S.C. § 362 as to the property located at 371 Piedmont St., Orange, VA 22960 and granting the following:

a. Relief from the Automatic stay allowing Movant to proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property and/or allowing Movant, through its agents, servicers and representatives to contact Debtor and/or Debtor(s)'s counsel for the purpose of engaging in discussions and consideration for possible loss mitigation options, solutions and/or resolutions with regard to the underlying deed of trust and note, including, but not limited to loan modification, deed in lieu or other loss mitigation alternatives.

b. That the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived.

c. Award Movant its reasonable attorneys' fees and expenses associated with this Motion, and the Trustee is hereby authorized to modify the plan as necessary to accommodate this claim;

d. For such other relief as the Court deems proper.

This the 26<sup>th</sup> day of January 2023.

/s/ Todd Rich  
Todd Rich, VA Bar No. 74296  
McMichael Taylor Gray LLC  
Attorney for Movant  
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MTG File No. 22-002890-05

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was provided via Regular U.S. Mail and/or Electronic Mail (CM/ECF) to the parties listed on the below service list.

**SERVICE LIST**

**VIA U.S. MAIL**

Charles Patrick Garner  
371 Piedmont Street  
Orange, VA 22960

**VIA CM/ECF**

Steven Shareff, Esq.  
P.O. Box 729  
Louisa, VA 23093

Herbert L. Beskin  
123 East Main St., Ste. 310  
Charlottesville, VA 22902

This the 26<sup>th</sup> day of January, 2023.

/s/ Todd Rich  
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